

Vs. Bimal Chandra Mitra....Respondent

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Court : Kolkata

Decided On : Feb-14-2012

Judge : Pinaki Chandra Ghose

Respondent : Bimal Chandra Mitra....Respondent

Judgement :

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ORDER

SHEET APD No.213 of 2005 C.S.No.616 of 1990 G.A.No.3640 of 2005 In the High Court at Calcutta Civil Appellate Jurisdiction Original Side -NEMAI PALIT & ANOTHER..APPELLANTS ..RESPONDENT VERSUS BIMAL CHANDRA MITRA BEFORE The Hon'ble Justice PINAKI CHANDRA GHOSE The Hon'ble Justice I.P.MUKERJ.Dated :

14. h February, 2012 The Court: In this appeal the Judgment-Debtors/Appellants have brought to the notice of this Court that the Receiver, who was appointed in a Partition Suit filed the present suit in question acting as such.

He did not bring to the notice of this Court that the property was owned by or devolved upon Sm.

Pritikana Mitra, who happened to be his wife.

He suppressed this material fact from this Court.

After the ownership devolved in favour of Sm.

Pritikana Mitra, he did not take any steps to bring the said fact to the notice of this Court.

There was no purpose in his acting as the Receiver.

The owner should have been brought on record.

We do not appreciate this action of the Receiver, who is not dead.

It was also the duty of the learned Counsel representing the Receiver to disclose all the facts before the Court, which has not been done from the very beginning.

The appellants have filed an application relying upon a document which shows that Sm.

Pritikana Mitra is the owner of the premises in question.

They submit that the Receiver should not have acted after the property devolved upon her.

Mr.P.K.Das objected to bring Sm.Pritikana Mitra on record.

He objected to our allowing the application so filed by the appellant in the appeal to rely upon the said additional evidence in terms of Order XLI Rule 27 of the Code of Civil Procedure.

We do not think that such objection can be accepted by us on the given facts as the said document is relevant for disposal of the Appeal.

We feel that substantial justice can be done to the parties by invoking Order XLI Rule 27(b) of the Code of Civil Procedure.

We accordingly allow the application filed by the appellants and direct the parties to produce such records before this Court at the time of hearing of the appeal.

We also feel that it would be proper to record at this stage that on the last occasion on the reason of death of Bimal Chandra Mitra, we had appointed Mr.Subhodeep Sen as Receiver in this matter.

not at this stage, in the given situation, we think that it is not necessary to leave the property in the hands of the Receiver.

We accordingly remove Mr.Sen and direct him not to act as Receiver in this matter any further.

We direct that the above amendment should be carried out in respect of the appeal in question deleting the name of Bimal Chandra Mitra, since deceased, and to bring the name of Sm.

Pritikana Mitra in his place and stead within a period of two weeks from date.

The learned Advocate for the appellants shall take steps in the matter in carrying out the amendment.

The application is thus disposed of.

Department is also directed to take steps in the matter in terms of this order as also with regard to consequential amendments so to be allowed in accordance with the provisions of Rules of the Original Side of this Court.

All parties concerned are to act on a signed photocopy of this order on the usual undertakings.

Urgent certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PINAKI CHANDRA GHOSE, J.) km (I.P.MUKERJI, J.)

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